

STATE OF MICHIGAN
COURT OF APPEALS

NEW ENGLAND TOWNE HOUSES
COOPERATIVE, INC.,

UNPUBLISHED
February 24, 2005

Plaintiff-Appellee-Cross-
Appellant,

v

CITY OF ROSEVILLE,

No. 251577
Macomb Circuit Court
LC No. 2002-004587-CZ

Defendant-Appellant-Cross-
Appellee.

Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right the circuit court order finding MCL 211.27a(6)(j) did not allow for the uncapping of plaintiff's property tax assessments. Plaintiff cross-appeals from the portion of the court's order finding the statute constitutional. We reverse regarding defendant's appeal and affirm the cross-appeal. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff is a non-profit cooperative housing corporation that operates a 221 unit cooperative housing complex in Roseville. Plaintiff holds legal title to the real estate, and occupants of the units must become members of the corporation by buying one share of stock. In July 2002, defendant's assessor notified plaintiff that defendant would partially uncap the taxable value of the property based on transfers of a number of membership units pursuant to MCL 211.27a(6)(j). Plaintiff filed this action, asserting that the increased assessment denied it due process of law and violated 1963 Const, art 9, § 3, as amended by Proposal A.

With the passage of Proposal A, 1963 Const, art 9, § 3 was amended to include the following:

For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When

ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value.

MCL 211.27a(6) states:

As used in this act, “transfer of ownership” means the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest. Transfer of ownership of property includes, but is not limited to, the following:

* * *

(j) A conveyance of an ownership interest in a cooperative housing corporation, except that portion of the property not subject to the ownership interest conveyed.

In *Colonial Square Cooperative v City of Ann Arbor*, 263 Mich App 208; 687 NW2d 618 (2004), the Court found that the phrase “defined by law” committed the power to define a qualifying transfer to the Legislature, and the Legislature did not violate Const 1963, art 9, § 3 when it expanded the definition to include the conveyance of a cooperative housing unit. MCL 211.27a(6)(j), *Colonial Square*, *supra* at 211. This panel is bound by that decision.

Given the constitutionality of the statute, the sole question is whether the transfer of memberships in the cooperative resulted in a transfer of ownership, allowing defendant to uncap the assessed value under Proposal A.

The definition of “transfer of ownership” contained in MCL 211.27a(6) includes the conveyance of title, or a present interest in the property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest. A conveyance of an ownership interest in a cooperative housing corporation is a transfer of ownership, except for that portion of the property not subject to the ownership interest conveyed. MCL 211.27a(6)(j).

Plaintiff relies on the general definitions of transfer of ownership and beneficial interest, MCL 211.27a(11), but it ignores the fact that MCL 211.27a(6)(j) states that a conveyance of an ownership interest in a cooperative housing corporation *is* a transfer of ownership. Thus, the other portions of the definition are irrelevant. If the transactions in question are conveyances of an ownership interest in a cooperative housing corporation, they are transfers of ownership.

Plaintiff asserts that it is simply a nonprofit corporation, and not a nonprofit cooperative housing corporation. However, it failed to raise this issue below, and it cannot expand the record by presenting evidence that is not in the lower court record. *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002).

Plaintiff owns the property. Plaintiff, in turn, is owned by its members, who are required to buy a share of stock before they are allowed to occupy a unit. When a member moves and a new member purchases a share of stock, there is a conveyance of a member’s ownership interest in the cooperative. This event is defined as a transfer of ownership by MCL 211.27a(6)(j),

which triggers the uncapping of the taxable value of the property under 1963 Const, art 9, § 3. The lower court erred in finding that the statute was not applicable to the transactions at issue.

Reversed.

/s/ Karen M. Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio